CRIMINAL YEAR SEMINAR

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CONSTITUTIONAL LAW / TRAFFIC / DUI

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CONSTITUTIONAL LAW, DUI and TRAFFIC 2018 Criminal Year Seminar

U.S. Const. amend. 4 Search and seizure— Investigative stop and reasonable suspicion

- ***State v. Primous,*** 242 Ariz. 221, 394 P.3d 646 (2017): Officers were looking for person who had outstanding warrants; area was apartment complex in neighborhood known for violent crimes and that person frequented area, carried weapons, and sold drugs and weapons; officers approached group of four individuals including defendant, who did not match description of person for whom officer were looking; one member of group ran, and officers began frisking others, finding drugs on one person and then finding drugs on defendant.

- **us.a4.ss.is.030** An officer may frisk an individual only when the officer possesses (1) a reasonable suspicion that the person to be searched has engaged in, or is about to engage in, criminal activity and (2) a reasonable belief that the person is armed and dangerous; and reasonable suspicion in turn requires a particularized and objective basis for the suspicion.
- ***Primous*** at ¶¶ 11–24: Court held officers did not have reasonable suspicion to frisk defendant, and fact that one person ran and another possess drugs did not give officers reasonable suspicion to do so.

U.S. Const. amend. 4 Search and seizure—Consent

- ***State v. Urrea,*** 242 Ariz. 518, 398 P.3d 584 (Ct. App. 2017): Officer stopped defendant for failure to signal when changing lanes; before completing traffic stop, officer approached defendant's vehicle second time to check VIN number and noticed items in vehicle suggesting that defendant might be transporting drugs; officer asked defendant if he could search vehicle, and defendant agreed and signed consent form.
- **us.a4.ss.cs.040** Once officers stop a person for a traffic violation and resolve that violation, if the person is then free to leave, the officers may ask the person for consent to search, and as long as there is no force or show of authority used, there is no unlawful detention, and the consent will be considered voluntary.
- ***Urrea*** at ¶¶ 6–12 Court held officer did not improperly prolong stop, and subsequent consent was valid.

U.S. Const. amend. 4 Search and seizure—Exclusionary rule and good-faith exception

- ***State v. Dean,*** 241 Ariz. 387, 388 P.3d 24 (Ct. App. 2017): Officers obtained search warrant for **Dean's** computer based on allegation that he had committed child molestation at another location 18 months earlier; trial court found warrant deficient but sufficiently particular for the officers to rely upon it under the good faith exception.
- **us.a4.ss.exap.020** The good-faith exception to the exclusionary rule does not apply when the police conduct is not objectively reasonable.
- ***Dean*** at ¶¶ 20–31: Court held the warrant did not establish probable cause that defendant had child pornography on his computer and not sufficiently particular, so police conduct in searching computer was not objectively reasonable.

28–1321(A) Implied consent—Implied consent to submit to test

- ***State v. Weakland,*** 2017 WL 5712585 (Ct. App. 2017): Officer told defendant Arizona law required him to take BAC test.
- **.020** Informing a driver that "Arizona law requires you to submit to and successfully complete tests of breath, blood, or other bodily substance" makes any subsequent consent involuntary.
- **us.a4.ss.exap.030** If the police conduct a search in compliance with binding precedent that is later overruled, because suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety, searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.

- ***Weakland*** at ¶¶ 5–24 & n.2: Because officer's language was consistent with language in Arizona cases in effect at time of search, and because state argued good faith exception as soon as possible after *Valenzuela* opinion, court did not apply exclusionary rule and thus did not preclude evidence of BAC; if the state does not make a claim at trial that the officer acted in conformity with the law as it existed at the time of the search, the state will be deemed to have waived that issue on appeal.

U.S. Const. amend. 5 Double jeopardy

- ***State v. Dickinson,*** 242 Ariz. 120, 393 P.3d 461 (Ct. App. 2017) ***Dickinson*** was charged with theft of mountain bike; in opening statement, defendant's attorney noted serial number on bike defendant sold on Craigslist did not match serial number of bike that had been stolen; during cross-examination of buyer, defendant's attorney learned buyer's wife had recently given police note on which she had written two numbers that theft victim said had been on bike, one of which matched number on bike buyer had purchased; buyer's wife apparently had note for 3 years before giving it to police, and neither prosecutor nor defendant's attorney knew about note; trial court discussed situation with attorneys, and defendant's attorney made clear he preferred to proceed with same jury, without any further reference to note, and prosecutor did not request granting mistrial; trial court, however, granted mistrial.

- **us.a5.dj.210** If the trial court orders a mistrial *sua sponte* or over the defendant's objection, double jeopardy precludes a retrial unless there was a manifest necessity for granting the mistrial.
- ***Dickinson*** at ¶¶ 2–24: Court held there was no manifest necessity to grant mistrial, thus double jeopardy precluded subsequent trial.

U.S. Const. amend. 5 Double jeopardy—Collateral estoppel and res judicata

- ***Crosby-Garbotz v. Fell,*** 2017 WL 6629521 (Ct. App. 2017): State charged defendant with child abuse based on injuries to child; in separate dependency action, juvenile court found defendant did not abuse child in question and dismissed dependency petition that was based solely on that alleged abuse.
- **us.a5.dj.ce&rj.040** Although collateral estoppel may apply in criminal proceedings, even when the issue was decided in a prior civil action, that doctrine is not favored in criminal cases and should be applied sparingly.

- ***Crosby-Garbotz*** at ¶¶ 9–29: Court was concerned that permitting collateral estoppel doctrine to apply in this context could cause state to forego dependency proceedings because of possibility it would be precluded from relitigating underlying issues in criminal proceeding, with potential effect of further endangering children, or that state might be compelled to present its entire criminal case in dependency proceeding, which could unnecessarily complicate and delay adjudication, placing undue burden on juvenile court system; court therefore concluded bright-line rule against applying collateral estoppel in this context best served litigants, their attorneys, courts of this state, and public.

U.S. Const. amend. 5 Self-incrimination—Voluntariness

- ***State v. Rushing,*** 243 Ariz. 212, 404 P.3d 240 (2017): Officer's told **Rushing:** "I don't think in the long run it's really going to make too much of a difference in—in your custody time, you're not going to get out."
- **us.a5.si.vol.100** In order for a confession to be involuntary within the meaning of the Due Process Clause, the officers must have exercised **coercive pressure** that was not dispelled; thus if the officers made an expressed or implied **promise** of a benefit or leniency, and the defendant's reliance on the promise overcame the defendant's will not to confess, the confession **will be deemed involuntary.**
- ***Rushing*** at ¶¶ 60–61: Court held officer's statement was not a promise of leniency and was clearly his own opinion and did not suggest he had ability to affect **Rushing's** sentence.

U.S. Const. amend. 5 Self-incrimination—*Miranda*

- ***State v. Rushing,*** 243 Ariz. 212, 404 P.3d 240 (2017): During questioning, **Rushing** said "I'm not sure I should say anything; I don't know" and "I probably should not talk about [the details]."
- **us.a5.si.mir.wav.090** If a person is in custody, has received the *Miranda* warnings, and is subject to custodial interrogation, the person must clearly and unambiguously invoke **the right to remain silent,** which must be judged from the perspective of a reasonable police officer in the circumstances.
- ***Rushing*** at ¶¶ 57–59: Court held **Rushing's** statements were not unambiguous invocations of his right to remain silent.

U.S. Const. amend. 5 Self-incrimination—*Miranda*

- ***State v. Escalante-Orozco,*** 241 Ariz. 254, 386 P.3d 798 (2017): In translating *Miranda* rights into Spanish, detective once translated "attorney" as "licenciado," which primarily means university graduate and secondarily lawyer, rather than "abogado," which means attorney; **Escalante-Orozco** contended he suffered from intellectual disability, was poorly educated, and had limited knowledge of American legal system; and that State failed to comply with Vienna Convention on Consular Relations.

- **us.a5.si.mir.080** If the police are required to give the *Miranda* warnings, the police must advise the suspect four things: (1) the suspect has the right to remain silent; (2) anything the suspect says may be used against the suspect in a court of law; (3) the suspect has the right to the presence of an attorney both before and during questioning; and (4) if the suspect cannot afford an attorney, one will be appointed prior to any questioning if the suspect so desires.
- ***Escalante-Orozco*** at ¶¶ 21–26: Court noted detective used "abogado" several times, and ***Escalante-Orozco*** said he understood his *Miranda* rights, before detective used word "licenciado," totality of circumstances showed *Miranda* warnings were adequate.

- **us.a5.si.mir.wav.010** As long as the police read the *Miranda* warnings to the defendant in a manner that would lead a reasonable person to understand the rights and do not engage in any improper actions, the police comply with the *Miranda* requirements, and the defendant's limitations do not make the waiver involuntary.
- ***Escalante-Orozco*** at ¶¶ 27–29: Even though ***Escalante-Orozco*** suffered from mental limitations, his actions showed he understood his *Miranda* rights.

- **us.a5.si.mir.wav.080** Although a violation of the Vienna Convention on Consular Relations might have a bearing on whether a confession was voluntary, it would have no bearing on whether the defendant had been appraised of the right to counsel and whether the defendant made a knowing and voluntary waiver of that right.
- ***Escalante-Orozco*** at ¶¶ 30–32: Ccourt rejected defendant's contention that violation of VCCR made his waiver of *Miranda* rights unknowing and unintelligent.

U.S. Const. amend. 6 Counsel— Ineffective assistance of counsel; Standards

- **us.a6.cs.iac.001** To establish a claim of ineffective assistance of counsel, the defendant must show counsel's representation fell below an objective standard of reasonableness, focusing on the practice and expectations of the legal community, and must show that counsel's performance was not reasonable under prevailing professional norms.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶ 5 (2017) (cites *Hinton v. Alabama*).

- **us.a6.cs.iac.012** To establish a claim of ineffective assistance of counsel, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶ 6 (2017) (cites *Strickland v. Washington*).

- **us.a6.cs.iac.050** In ruling on a claim of ineffective assistance of counsel, the trial court must make specific findings of fact, and if the trial court fails to do so, the reviewing court is not required to give deference to the trial court's rulings, and must instead review the record itself.
- ***State v. Pandeli,*** 242 Ariz. 175, 394 P.3d 2, ¶ 3 (2017) (trial court found ineffective assistance of counsel and granted defendant's petition for post-conviction relief; because trial court made few specific findings and failed to connect them to its conclusions on may issues presented, supreme court conducted its own review and denied defendant's requested relief).

U.S. Const. amend. 6 Counsel— Ineffective assistance of counsel; Performance

- **us.a6.cs.iac.110** In order to prevail on a claim of ineffective assistance of counsel, the defendant must show that counsel's actions were deficient, and under this standard, counsel need not make unnecessary motions or objections or pursue defenses that have no chance of success.
- ***State v. Pandeli,*** 242 Ariz. 175, 394 P.3d 2, ¶¶ 46–51 (2017) (defendant contended counsel's failure to object to Dr. Keen's autopsy testimony other act evidence was ineffective assistance of counsel; court found Dr. Keen properly relied on report of examiner who performed autopsy, thus Dr. Keen's autopsy testimony was admissible, so there was no basis to object).

- **us.a6.cs.iac.120** The determination of which defense to pursue is a strategic or tactical decision, and will support a claim of ineffective assistance of counsel only if there was no reasonable basis for the action taken.
- ***State v. Pandeli,*** 242 Ariz. 175, 394 P.3d 2, ¶¶ 22–26 (2017) (defendant contended counsel's failure to obtain brain imaging scans was ineffective assistance of counsel; court found this was strategic decision).

- **us.a6.cs.iac.130** The determination of the extent and type of cross-examination of a witnesses is a strategic or tactical decision, and will support a claim of ineffective assistance of counsel only if there was no reasonable basis for the action taken.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 9–21 (2017) (defendant contended counsel's failure to cross-examine state's rebuttal witness was ineffective assistance of counsel; court found this was strategic decision).
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 53–55 (2017) (defendant contended counsel's failure to cross-examine defendant's half-brother was ineffective assistance of counsel; court found this was strategic decision).

- **us.a6.cs.iac.135** The determination of what objections to make is a strategic or tactical decision, and will support a claim of ineffective assistance of counsel only if there was no reasonable basis for the action taken.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 31–33 (2017) (defendant contended counsel's failure to challenge aggravating factors was ineffective assistance of counsel; court found this was strategic decision).
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 34–36 (2017) (defendant contended counsel's failure to object to other act evidence was ineffective assistance of counsel; court found this was strategic decision).
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 37–42 (2017) (defendant contended counsel's failure to object to rebuttal evidence was ineffective assistance of counsel; court found this was strategic decision).
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 43–45 (2017) (defendant contended counsel's failure to object to references to serial killers was ineffective assistance of counsel; court found this was strategic decision).

- **us.a6.cs.iac.140** The determination of which instructions to request is a strategic or tactical decision, and will support a claim of ineffective assistance of counsel only if there was no reasonable basis for the action taken.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 56–58 (2017) (defendant contended counsel's failure to request instructions on each of 83 individual mitigating factors was ineffective assistance of counsel; court found counsel's decision to group them into 12 categories and request instruction of each of those 12 categories was strategic decision).

- **us.a6.cs.iac.160** The relative inexperience of a second-chair defense attorney in a capital trial does not in itself constitute ineffective assistance of counsel, especially when the first-chair attorney was experienced, and a defendant facing the death penalty does not have a per se constitutional right to the assistance of two attorneys.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 62–64 (2017) (although second-chair defense attorney had never done a trial, not even a misdemeanor, first-chair defense attorney was experienced criminal defense attorney who had been involved in capital cases.

- **us.a6.cs.iac.180** A contention that counsel's failure to take certain actions will not support a claim of ineffective assistance of counsel if counsel did take that action.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 27–30, 59–61 (2017) (defendant contended counsel's failure to present sufficient mitigation was ineffective assistance of counsel; court found counsel adequately investigated mitigation, and to extent counsel only presented certain mitigation, this was strategic decision).
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶ 52 (2017) (defendant contended counsel's failure to object to testimony of victim's sister was ineffective assistance of counsel; court noted counsel did object by unsuccessfully moving to preclude this testimony).
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 65–68 (2017) (defendant contended counsel's failure to conduct adequate voir dire was ineffective assistance of counsel; court found voir dire was adequate).

- **us.a6.cs.iac.185** The general rule is that several non-errors and harmless errors cannot add up to one reversible error, thus the Arizona Supreme court has not recognized the cumulative error doctrine for ineffective assistance of counsel claims.
- *State v. Pandeli,* 242 Ariz. 175, 394 P.3d 2, ¶¶ 69–72 (2017) (court rejected defendant's claim that, even if court did not find deficient performance on any one individual issue, multiple instances of ineffective assistance of counsel cumulatively prejudiced him; court noted that "no aggregate ineffective assistance of counsel occurred here").

Ariz. Const. art. 2, sec. 22. Bailable offenses

- ***Simpson v. Miller,*** 241 Ariz. 341, 387 P.3d 1270 (2017): Defendants were charged with sexual conduct with minor under the age of 15.
- ***Chantry v. Astrowsky,*** 242 Ariz. 355, 395 P.3d 1114 (Ct. App. 2017): Defendant was charged with child molestation of a child under the age of 15.

- **az.2.22.010** To the extent art. 2, § 22(A)(1) denies release to a defendant charged with certain enumerated offenses, it is unconstitutional; instead, a defendant may be denied release only for an offense that inherently demonstrates future dangerousness, and for an offense that does not inherently demonstrate future dangerousness, only if the state proves by clear and convincing evidence that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community.
- ***Simpson*** at ¶¶ 14, 24–31: Court held sexual conduct with minor under age of 15 does not inherently demonstrate future dangerousness.
- ***Chantry*** at ¶¶ 1–5: Court noted that molestation of a child under theage of 15 was a lesser-included offense of sexual conduct with minor under age of 15 and therefore does not inherently demonstrate future dangerousness.

- ***State v. Wein (Henderson & Goodman),*** 242 Ariz. 352, 395 P.3d 1111 (Ct. App. 2017): Defendants were each charged with sexual assault; trial court held state failed to prove defendants were ongoing dangers to community and set bail.
- **az.2.22.020** A defendant may be denied release for an offense that inherently demonstrates future dangerousness, and sexual assault is an offense that inherently demonstrates future dangerousness.
- ***Henderson & Goodman*** at ¶¶ 1, 9: Court held: "Sexual assault remains a non-bailable offense," and therefore granted relief to state).

- ***State v. Wein (Sisco),*** 242 Ariz. 372, 396 P.3d 608 (Ct. App. 2017): ***Sisco*** was charged with sexual assault, child molestation, and sexual conduct with minor; state wanted to present victim's statement through representative; trial court held it would not consider victim's statement unless defendant had opportunity to cross-examine victim.
- **az.2.2.1.a.4.020** The victim has the right to be heard at any proceeding where the defendant's post-arrest release is being considered, and may not be subject to cross-examination.
- ***Sisco*** at ¶¶ 7–11: Court held "victim's statements, despite being hearsay, are permitted and must be considered in a *Simpson II* hearing."

- ***Samiuddin v. Nothwehr,*** 243 Ariz. 204, 404 P.3d 232 (2017): **Samiuddin** was charged with five counts of public sexual indecency to minor and two counts of public sexual indecency after he allegedly stood nude at his apartment window and masturbated in view of victims (two women and five children) who were walking on sidewalk; trial court imposed as release conditions that he reside apart from his family and that he have no contact with his minor children unless supervised by a court-approved monitor; **Samiuddin** contended trial court did not have authority to impose those release conditions, that he was entitled to an evidentiary hearing, and that record was inadequate..
- **az.2.22.140** This section authorizes the trial court to impose pretrial release conditions, but these conditions must comply with Arizona Rules of Criminal Procedure 7.2(a) and 7.3(b), which require release conditions to be the least onerous that are reasonable and necessary to protect other persons or the community.
- ***Samiuddin*** at ¶¶ 2, 8–18: Court held trial court had authority to impose those release conditions.

- **az.2.22.150** Arizona rules and statutes do not require an evidentiary hearing to impose initial pretrial release conditions or to reconsider the conditions; rather, what is required is an opportunity to be heard on release conditions.
- ***Samiuddin*** at ¶¶ 19–23: Court noted **Samiuddin** was timely heard before neutral judge, was assisted by attorney and translator, and was permitted to argue and offer information otherwise inadmissible under evidentiary rules.

- **az.2.22.160** In order to impose the least onerous release conditions reasonable and necessary to protect the public, the trial court must make an individualized determination, and must make findings and articulate its reasoning for determining that the conditions are the least onerous measures reasonable and necessary to mitigate an identifiable risk of harm.
- ***Samiuddin*** at ¶¶ 24–27: Court concluded record was inadequate to determine whether trial court's pretrial release conditions complied with newly promulgated rules and were based on individualized determination, so it vacated those conditions and directed trial court to consider anew any appropriate pretrial release conditions.

Ariz. Const. art. 2, sec. 23 & 24. Trial by jury—Right to a jury

- ***Phoenix City Pros. Off. v. Nyquist (Hernandez-Alejandro),*** 243 Ariz. 227, 404 P.3d 255 (Ct. App. 2017): ***Hernandez-Alejandro*** was charged with causing serious physical injury or death by moving violation; defendant contended there was common law antecedent offense of operating motor vehicle so as to endanger any property or individual, that was jury eligible
- **az.2.23.rj.020** To determine whether the offense mandates a jury trial, the court should consider two things: **First,** under Article 2, section 23, whether the offense is an offense, or shares substantially similar elements as an offense, for which the defendant had a common-law right to a jury trial before statehood.
- ***Hernandez-Alejandro*** at ¶¶ 13–17: Court noted actual death or injury was not required for operating a motor vehicle so as to endanger any property or individual, while it was under § 28–672, so charged offense was not jury eligible.

- **az.2.23.rj.060** To determine whether the offense mandates a jury trial, the court should consider two things: **Second,** under Article 2, section 24, the severity of the possible penalty; if the offense is classified as a misdemeanor punishable by no more than 6 months incarceration, the court will presume the offense is one for which the defendant is not entitled to a jury trial.
- ***Hernandez-Alejandro*** at ¶¶ 18–19: Offense had a maximum sentence of 30 days, and defendant failed to show any additional consequences that would entitle him to jury trial.

- **28–672 Causing serious physical injury or death by a moving violation; time limitation; penalties; classification; definition.**
- **28–773 Intersection entrance.**
- ***Hernandez-Alejandro*** contended state had to prove he acted knowingly.
- **.010** This offense is a strict liability offense that does not require proof of any culpable mental state.
- ***Hernandez-Alejandro*** at ¶¶ 4–23: Court viewed language of statute and legislative history and held state did not have to prove any culpable mental state; **concurrence** noted charge of violating § 28–672 was based on violation of § 28–773, and that § 28–773 required proceeding without "caution," which concurrence equated with negligence.

U.S. Const. amend. 4 Search and seizure— Arrest within the home without a warrant

- ***State v. Hernandez,*** 242 Ariz. 568, 399 P.3d 115 (Ct. App. 2017): Officers determined vehicle's insurance had expired, followed vehicle, and turned on emergency lights; shortly after that, driver turned into private driveway and proceeded into backyard area of residence; when vehicle stopped, officer approached, smelled marijuana, and ultimately arrested defendant.
- **us.a4.ss.aih.010** An officer may not arrest a person in a home without a warrant unless there is consent or exigent circumstances, which include (1) response to an emergency, (2) hot pursuit, (3) possibility of destruction of evidence, (4) possibility of violence, (5) knowledge that the subject is fleeing or attempting to flee, and (6) substantial risk of harm to the persons involved or to the law enforcement process if the officers must wait for a warrant.

- **28–622.01 Unlawful flight from pursuing law enforcement vehicle.**
- **28–1595(A) Failure to stop or provide driver license or evidence of identity—Failure to stop motor vehicle.**
- **.060** In order to violate **§ 28–622.01,** all a person has to do is refuse to stop on the command of an officer who is in a police car, thus there is no requirement that the person take evasive action or lead the police car on a high-speed chase.
- **.010** In order to violate **§ 28–1595(A),** a person must refuse to stop on the command of an officer who is either in a police car or on foot.
- ***Hernandez*** at ¶¶ 9–27: Court held that, when defendant did not stop in response to emergency lights, defendant violated either A.R.S. § 28–622.01 or § 28–1595(A), so officers properly pursued defendant onto property.

28–1321(C) Implied consent—Person dead, unconscious, or otherwise incapacitated

- ***State v. Havatone,*** 241 Ariz. 506, 389 P.3d 1251 (2017): ***Havatone*** was conscious at scene of collision and was airlifted to hospital in Las Vegas, but was unconscious at hospital; officer instructed Las Vegas officers to obtain blood sample.
- **.010** Blood may be taken from a dead, unconscious, or otherwise incapacitated person only if case-specific exigent circumstances exist.
- **.020** When police have probable cause to believe a suspect has committed a DUI, a nonconsensual blood draw is permissible if, under the totality of the circumstances, law enforcement officials reasonably determine they cannot obtain a warrant without a significant delay that would undermine the effectiveness of the testing.
- ***Havatone*** at ¶¶ 13–17: Because state did not show any exigent circumstances, BAC results should have been suppressed.

28–1388(E) Blood and breath tests; violation; classification; admissible evidence—Sample of blood, urine, or other bodily substance

- ***State v. Nissley,*** 241 Ariz. 327, 241 Ariz. 327, 387 P.3d 1256 (2017): At 5:30 p.m., ***Nissley*** collided head-on into oncoming vehicle, injuring four persons in vehicle and killing pedestrian; ***Nissley*** was very hostile and combative with medical personnel.
- **.010** To invoke the medical blood draw exception set forth in this section, the state must establish the following: (1) probable cause existed to believe the suspect was driving under the influence; (2) exigent circumstances made it impractical for law enforcement to obtain a warrant; (3) medical personnel drew the blood sample for medical reasons; and (4) the provision of medical services did not violate the suspect's right to direct his or her own medical treatment.
- ***Nissley*** at ¶¶ 10, 24: Court cites *State v. Cocio,* 147 Ariz. 277, 709 P.2d 1336 (1985)).

- **.020** The natural dissipation of alcohol in the bloodstream in not a *per se* exigent circumstance; the state must establish exigency by showing that, under the circumstances specific to the case, it was impractical to obtain a warrant.
- ***Nissley*** at ¶¶ 11–12: Court disavows anything in *Cocio* to the contrary.

- **.030** Before the state may use as evidence a portion of a blood, urine, or other sample taken for medical purposes, the state is required to prove that (1) the suspect expressly or impliedly consented to medical treatment or (2) medical personnel acted when the suspect was incapable of directing his or her own medical treatment.
- ***Nissley*** at ¶¶ 2, 20–24: Court stated that record did not conclusively establish whether ***Nissley*** was able or competent to direct his own medical treatment and whether medical personnel acted against that right, and so remanded for trial court to apply appropriate standards and determine whether law enforcement personnel lawfully obtained blood sample.

- ***State v. Peltz,*** 242 Ariz. 23, 391 P.3d 1215, ¶ 36: Officer testified that, based on his training as "combat life saver in the military," he was aware of possibility of "intravenous applications of fluids," which would "alter an individual's blood alcohol concentration" and "essentially destroy whatever evidence was available"; thus state met its burden of showing exigent circumstances.